

Enrolled Senate Bill 1505

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CHAPTER

AN ACT

Relating to civil commitment of Native Americans; creating new provisions; amending ORS 426.180, 426.200, 426.210, 426.250 and 430.197; repealing ORS 426.190; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 426.180 is amended to read:

426.180. [(1) *This section applies to commitments of a person from a reservation for land-based tribes of Native Americans when, under federal law, the state does not have jurisdiction of commitments on the reservation.*]

[(2) *When this section is applicable as provided under subsection (1) of this section, a person alleged to be mentally ill by affidavit of two other persons may be admitted to a state hospital for persons with mental illness for emergency treatment, care and custody, provided such affidavit includes or is accompanied by all of the following:*]

[(a) *The circumstances constituting the emergency.*]

[(b) *Written application for admission to the hospital, executed in duplicate.*]

[(c) *A certificate to the effect that the person is so mentally ill as to be in need of immediate hospitalization.*]

[(d) *A medical history, including the name, condition, sex and age of the person.*]

[(e) *The name and address of the nearest relative or legal guardian, if any, of the person.*]

[(3) *The certificates, applications and medical histories shall be made upon forms prescribed by the Oregon Health Authority and shall be executed by the county health officer or by two physicians licensed by the Oregon Medical Board, none of whom shall be related to the person by blood or marriage.*]

(1) ORS 426.180 to 426.210 apply to the commitment of an individual in Indian country if the state does not have jurisdiction over the individual.

(2) As used in this section and ORS 426.200 and 426.210, “hospital” means a hospital that is licensed under ORS chapter 441, other than an institution listed in ORS 426.010.

(3) If the court of a tribe having jurisdiction over an individual issues an order finding that the individual is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness, a person may request that the individual be taken by a tribal police officer or other peace officer to a hospital or nonhospital facility by submitting to the officer a certified copy of the order and an affidavit that includes:

(a) The name and address of the nearest relative or legal guardian of the individual; and

(b) A medical history completed by one of the following, who may not be related to the individual by blood or marriage:

(A) The tribe's mental health authority, if the tribe has entered into an agreement with the state pursuant to ORS 430.630 (9)(a)(B);

(B) A physician licensed by the Oregon Medical Board; or

(C) A qualified mental health professional.

(4) Upon receipt of the order and affidavit described in subsection (3) of this section, the tribal police officer or other peace officer shall immediately transport the individual to a hospital or a nonhospital facility and present the individual to the hospital or nonhospital facility accompanied by the court order and affidavit.

(5) The director of the hospital or nonhospital facility may refuse to admit the individual if the director or an attending physician, after reviewing the documents accompanying the individual, is not satisfied that an emergency exists or that the individual is dangerous to self or others and in need of immediate care, custody or treatment for mental illness.

(6) If the hospital or nonhospital facility admits the individual, the director or attending physician shall notify the community mental health program director for the area and the circuit court with jurisdiction in the area where the facility is located. Upon receipt of the notice, the community mental health program director shall initiate commitment proceedings in accordance with ORS 426.070.

[4] (7) [When a person] If an individual is admitted to a [state] hospital or nonhospital facility under this section, any physician treating the [person] individual shall give the [person] individual the warning under ORS 426.123.

[5] (8) This section may be applied as provided by agreement with the [ruling] governing body of the reservation. Payment of costs for a commitment made under this section shall be as provided under ORS 426.250.

(9) The director of the hospital or nonhospital facility or attending physician shall notify the appropriate tribe regarding all actions taken under ORS 426.180 to 426.210 no later than 24 hours after the action is taken, except for information protected from disclosure by state or federal law.

SECTION 2. ORS 426.200 is amended to read:

426.200. [Within 48 hours after admission under ORS 426.190, an examination as to the mental condition of any person so admitted shall be commenced and shall be conducted as expeditiously as possible by two staff physicians of the state hospital where the person has been received. If, after completion of the examination, the physicians certify that the person is so mentally ill as to be in need of treatment, care or custody, the superintendent shall, if the superintendent determines that further hospitalization is necessary, within 48 hours thereafter, either obtain from the mentally ill person a signed application for voluntary admission under the provisions of ORS 426.220 or file a complaint with the court having jurisdiction under ORS 426.060 in the county where the hospital is located, requesting a court commitment as provided by law. If the examining physicians certify that the person is not so mentally ill as to be in need of treatment, care or custody, the superintendent of the state hospital shall immediately discharge the person. Costs shall be paid as provided under ORS 426.250.]

Within 72 hours after admission under ORS 426.180, the community mental health program director shall initiate an investigation in accordance with ORS 426.070 (3).

SECTION 3. ORS 426.210 is amended to read:

426.210. [In no event shall any person] **An individual** admitted to a [state] hospital or nonhospital facility pursuant to the emergency proceedings [provided by] **under** ORS 426.180 to 426.200 **may not** be detained [therein by virtue of such proceedings] **there** for more than five judicial days following admission. The court, for good cause, may allow a postponement and detention during [the] a postponement as provided under ORS 426.095.

SECTION 4. ORS 426.250 is amended to read:

426.250. The following is a nonexclusive list of responsibilities for payment of various costs related to commitment proceedings under this chapter as described:

(1) Any physician or qualified person recommended by the Oregon Health Authority who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to be mentally ill shall be allowed a fee as the court in its discretion determines reasonable for the examination.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally ill person who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the allegedly mentally ill person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply with ORS 136.570.

(3) If a person with a right to a counsel under ORS 426.100 is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the representation of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney General's office. Any costs for district attorneys or other counsel appointed to assume responsibility for presenting the state's case shall be paid by the county where the commitment hearing is held, subject to reimbursement under ORS 426.310.

(5) All costs incurred in connection with a proceeding under ORS [426.200] **426.180**, including the costs of transportation, commitment and delivery of the person, shall be paid by the county of which the person is a resident[; *or*,]. If the person is not a resident of this state, then **the costs incurred in connection with the proceeding shall be paid** by the county from which the emergency admission was made.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a person from a reservation [*for land-based tribes of Native Americans*], including the cost of transportation, commitment and delivery of the person, shall be paid by the [*ruling*] **governing** body of the reservation of which the person is a resident.

SECTION 5. ORS 430.197 is amended to read:

430.197. The Mental Health Services Fund is established in the State Treasury, separate and distinct from the General Fund. The Mental Health Services Fund comprises moneys collected or received by the Oregon Health Authority, the Department of Human Services and the Department of Corrections under ORS 179.640, 426.241 and 430.165. The moneys in the fund are continuously appropriated to the Oregon Health Authority, the Department of Human Services and the Department of Corrections for the purposes of paying the costs of:

- (1) Services provided to a person in a state institution, as defined in ORS 179.610;
- (2) Emergency psychiatric care, custody and treatment paid for by a county under ORS 426.241;
- (3) Emergency care, custody or treatment provided to a person admitted to or detained in a state mental hospital **or nonhospital facility** under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233; and
- (4) Programs operating under ORS 430.265, 430.306 to 430.375, 430.405, 430.415, 430.850 to 430.880, 813.500 and 813.510.

SECTION 6. ORS 426.190 is repealed.

SECTION 7. The amendments to ORS 426.180, 426.200, 426.210, 426.250 and 430.197 by sections 1 to 5 of this 2012 Act and the repeal of ORS 426.190 by section 6 of this 2012 Act apply to commitment proceedings initiated on or after the effective date of this 2012 Act.

SECTION 8. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by Senate February 13, 2012

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House February 20, 2012

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State